

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 898 of the Regular Session

1 State of Arkansas
2 8 General Assembly
3 Regular Session, 2005
4

As Engrossed: S2/24/05

A Bill

SENATE BILL 426

5 By: Senator Malone
6
7

For An Act To Be Entitled

9 AN ACT TO STREAMLINE PROCESSES FOR LONG-TERM CARE
10 FACILITY ADMINISTRATIVE APPEALS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

14 AN ACT TO STREAMLINE PROCESSES FOR LONG-
15 TERM CARE FACILITY ADMINISTRATIVE
16 APPEALS.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 20-10-101 is amended to read as follows:
22 20-10-101. Definitions.

23 As used in this chapter, unless the context otherwise requires:

24 (1) "Administrative remedy" means temporary management, denial
25 of payment for all new admissions, transfer of residents, termination or
26 suspension of license, termination of provider agreement, directed plan of
27 correction, directed in-service training, and remedies established by
28 Arkansas law, including remedies provided in § 20-10-1408;

29 ~~(1)~~(2) "Administrator-in-training program" means a program for
30 gaining supervised practical experience in long-term care administration;

31 ~~(2)~~(3) "Clock hour" means a period of contact experience
32 comprising the full sixty (60) minutes;

33 ~~(3)~~(4) "Department" means the Department of Human Services;

34 ~~(4)~~(5) "Director" means the Director of the Department of Human
35 Services;



1 ~~(5)~~(6) "Division" means the appropriate division as determined
2 by the Director of the Department of Human Services;

3 ~~(6)~~(7) "Head injury" means a noncongenital injury to the brain
4 or a neurological impairment caused by illness, accident, or nondegenerative
5 etiology;

6 ~~(7)~~(8) "Head injury retraining and rehabilitation" means an
7 individualized program of instruction designed to assist an individual
8 suffering disability as a result of head injury to reduce the adverse effects
9 of the disability and improve functioning in activities of daily living and
10 work-related activities, but which does not include inpatient diagnostic
11 care, and which may be offered in a residential or day program;

12 ~~(8)~~(9) "Long-term care facility" means a nursing home,
13 residential care facility, post-acute head injury retraining and residential
14 care facility, or any other facility which provides long-term medical or
15 personal care;

16 ~~(9)~~(10) "Long-term care facility administrator" means a person
17 who administers, manages, supervises, or is in general administrative charge
18 of a long-term care facility whether the individual has an ownership interest
19 in the home and whether his functions and duties are shared with one (1) or
20 more individuals;

21 ~~(10)~~(11) "Post-acute head injury residential care" means a
22 residential program offering assistance in activities of daily living for
23 individuals who are disabled because of head injury and are therefore unable
24 to live independently;

25 ~~(11)~~(12) "Post-acute head injury residential care facility"
26 means a residential care facility which is not a nursing home and which
27 provides head injury retraining and rehabilitation for individuals who are
28 disabled because of head injury and are not in present need of inpatient
29 diagnostic care in a hospital or related institution;

30 ~~(12)~~(13) "Reciprocity licensing" means a method by which an
31 individual licensed in good standing in one state may apply for licensure
32 status in another state, provided the state from which the individual wishes
33 to transfer has standards comparable to the state to which the individual
34 wishes to transfer;

35 ~~(13)~~(14) "Residential care facility" means a building or
36 structure which is used or maintained to provide, for pay on a twenty-four-

1 hour basis, a place of residence and board for three (3) or more individuals
 2 whose functional capabilities may have been impaired but who do not require
 3 hospital or nursing home care on a daily basis but could require other
 4 assistance in activities of daily living; and

5 ~~(14)~~(15) "Sponsor" means legal guardian.

6
 7 SECTION 2. Arkansas Code § 20-10-204(b) and (c), concerning notice of
 8 violations by long-term care facilities, are amended to read as follows:

9 (b)(1) Each notice of violation shall be prepared in writing and shall
 10 specify the exact nature of the classified violation, the statutory provision
 11 or specific rule alleged to have been violated, the facts and grounds
 12 constituting the elements of the classified violation, and the amount of
 13 civil penalty or other administrative remedy as defined in § 20-10-101, if
 14 any, ~~assessed~~ imposed by the Director of the Department of Human Services.

15 (2)(A) The notice shall also inform the licensee of the right to
 16 hearing under § 20-10-208 when administrative remedies or civil penalties are
 17 imposed.

18 (B) Any hearing conducted under this chapter shall conform
 19 to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and rules
 20 of the Department of Human Services promulgated under that act.

21 ~~(c) The Department of Human Services shall provide a fair and~~
 22 ~~impartial hearing officer for appeals.~~

23
 24 SECTION 3. Arkansas Code § 20-10-208 is amended to read as follows:
 25 20-10-208. Hearings.

26 (a)(1) A licensee may contest an assessment of a civil penalty or any
 27 administrative remedy imposed by the Office of Long-Term Care of the Division
 28 of Medical Services of the Department of Human Services by sending a written
 29 request for hearing to the Director of the Department of Human Services. ~~The~~
 30 ~~director shall designate a hearing examiner who shall preside over the case~~
 31 ~~and make findings of fact and conclusions of law in the form of a~~
 32 ~~recommendation to the director, who shall then review the case and make the~~
 33 ~~final determination or remand the case to the hearing examiner for further~~
 34 ~~findings of law or fact.~~

35 (2) Requests for hearings ~~must~~ shall be received by the ~~director~~
 36 Director of the Department of Human Services within ~~ten (10) working~~ sixty

1 (60) days after receipt by the ~~long-term care facility~~ licensee of the notice
2 of violation and the assessment of any civil penalty or any administrative
3 remedy imposed by the office.

4 (b)(1) The Director of the Department of Human Services shall assign
5 the appeal to a fair and impartial hearing officer who shall not be a full-
6 time employee of the Department of Human Services.

7 (2) The hearing officer shall preside over the hearing and make
8 findings of fact and conclusions of law in the form of a recommendation to
9 the Director of the Department of Human Services.

10 (3)(A) The Director of the Department of Human Services shall
11 review any recommendation and make the final decision.

12 (B) The Director of the Department of Human Services may
13 approve the recommendation or may for good cause:

14 (i) Modify the recommendation in whole or in part;

15 (ii)(a) Remand the recommendation for further
16 proceedings as directed by the Director of the Department of Human Services.

17 (b) If the recommendation is remanded, the
18 hearing officer shall conduct further proceedings as directed by the Director
19 of the Department of Human Services and shall submit to the Director of the
20 Department of Human Services an amended recommendation; or

21 (4) If the Director of the Department of Human Services modifies
22 a recommendation, in whole or in part, or if the director remands the
23 decision, the Director of the Department of Human Services shall state in
24 writing at the time of the remand or modification all grounds for the remand
25 or modification, including statutory, regulatory, factual, or other grounds.

26 (5) The Director of the Department of Human Services'
27 modification or approval of a recommendation shall be the final agency action
28 as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

29 ~~(3)(c)(1)(A)~~ The Department of Human Services department shall
30 commence the hearing within forty-five (45) days of receipt of the request
31 for hearing, and the director shall issue a final decision within ten (10)
32 working days after the close of the hearing the hearing officer shall notify
33 the Director of the Office of Long-Term Care of the date, time, and place of
34 the hearing.

35 (B) The notification shall be in writing and shall be sent
36 at least twenty (20) days before the hearing date.

1 (C)(i) The licensee may agree in writing to waive the
2 requirement that the department commence the hearing within forty-five (45)
3 days.

4 (ii) If the licensee waives the time limit under
5 subdivision (c)(1)(C)(i) of this section, the hearing officer shall commence
6 the hearing at the time agreed to by the parties.

7 (2) The hearing officer shall issue a recommended decision
8 within ten (10) working days after the close of the hearing, receipt of the
9 transcript, or the submission of post-trial briefs requested or approved by
10 the hearing officer, whichever is later.

11 (3) Unless the Director of the Department of Human Services acts
12 on the recommendation of the hearing officer within sixty (60) days of
13 receipt of the recommendation, the recommendation of the hearing officer
14 shall be final.

15 (4) Assessments shall be paid to the ~~Office of Long-Term Care~~
16 office within ~~ten (10)~~ thirty (30) working days of receipt of the notice of
17 violation or within ~~ten (10)~~ thirty (30) working days of receipt of the final
18 ~~determination by the director~~ agency action in contested cases, unless the
19 matter has been timely appealed to circuit court.

20 (5) Facilities failing to pay assessed civil penalties shall be
21 subject to a corresponding reduction in the succeeding Medicaid vendor
22 payment in lieu of nonpayment.

23 (d) Except to the extent that it is inconsistent with federal law or
24 regulation, a written request for a hearing shall stay, until denied by the
25 Director of the Department of Human Services, any enforcement action imposed
26 by the office pending the hearing and the final decision of the Director of
27 the Department of Human Services.

28 (e) Any party subject to appear before a hearing officer may appear
29 and be heard at any proceeding prescribed in this section or may be
30 represented by an attorney or other designated representative, or both.

31 (f)(1) Upon written request of a licensee, the department shall
32 provide copies of all documents, papers, reports, and other information
33 gathered through inspection or survey that relate to the matter being
34 appealed.

35 (2) The disclosure shall be made no later than ten (10) working
36 days before a scheduled hearing date or by the date specified by the hearing

1 officer.

2 ~~(b)(1)(g)(1) Hearing examiners~~ The hearing officer retained by the
3 department shall have the authority at the request of either party to
4 subpoena witnesses and to require the production of documentary evidence.

5 (2) Upon failure of a person without lawful excuse to obey a
6 subpoena or to give testimony, application may be made to the circuit court
7 in the county in which the hearing is to be held for a court order compelling
8 compliance.

9
10 *SECTION 4.* Arkansas Code § 20-10-303 is repealed:

11 ~~20-10-303. Authority to hear appeals.~~

12 ~~(a) The Long Term Care Facility Advisory Board created in § 20-10-301~~
13 ~~shall have the power and authority to hear all appeals by licensed long term~~
14 ~~care facilities, long term care administrators, or other parties regulated by~~
15 ~~the Office of Long Term Care with regard to licensure and certification.~~

16 ~~(b)(1) Any long term care facility or party regulated by the office~~
17 ~~seeking a hearing before the board shall submit a request in writing to the~~
18 ~~chairman of the board. The written request, until denied by the chairman,~~
19 ~~shall stay the action of the appeal pending the hearing and final decision.~~

20 ~~(2) Upon receiving a written request for a hearing from any~~
21 ~~party regulated by the office, the chairman shall place the request on the~~
22 ~~agenda to be considered in a hearing at the next scheduled or called meeting~~
23 ~~of the board and may assign the appeal to an impartial hearing officer who~~
24 ~~shall not be a full-time employee of the Department of Human Services.~~

25 ~~(3) The chairman shall notify in writing the party making the~~
26 ~~request to the Director of the Office of Long Term Care of the date, time,~~
27 ~~and place of the hearing. This notification by the chairman shall be in~~
28 ~~writing and shall be sent at least seven (7) working days prior to the~~
29 ~~hearing date.~~

30 ~~(c) The chairman and the hearing officer shall both have authority to~~
31 ~~issue subpoenas at the request of any party to an appeal.~~

32 ~~(d) The hearing officer may preside over the appeal, which shall be~~
33 ~~conducted in accordance with the Arkansas Administrative Procedure Act, § 25-~~
34 ~~15-201 et seq., and make specific findings of fact and conclusions of law in~~
35 ~~the form of recommendations to the board.~~

36 ~~(e) Any party subject to appear before the board may appear and be~~

1 ~~heard at any proceeding prescribed herein or may choose to be represented by~~
2 ~~an attorney at law or through other designated representatives.~~

3 ~~(f)(1) All decisions rendered by the board shall be submitted to the~~
4 ~~Deputy Director of the Division of Medical Services of the Department of~~
5 ~~Human Services, subject to his review and final determination. The deputy~~
6 ~~director may, for good cause, approve, reject, or remand the decisions to the~~
7 ~~board for further proceedings.~~

8 ~~(2) Any rejection of the decisions of the board must clearly~~
9 ~~state in writing the basis for the rejection, with the statutory and~~
10 ~~regulatory grounds for the rejection, and must be filed as the final decision~~
11 ~~of the agency.~~

12 ~~(g) The deputy director must act on a decision of the board within~~
13 ~~thirty (30) days of its decision or else the decision of the board shall be~~
14 ~~final.~~

15
16 *SECTION 5.* Arkansas Code § 20-10-407(b), concerning denial,
17 revocation, and suspension of licenses by the Office of Long-Term Care, is
18 amended to read as follows:

19 (b) Any denial of the issuance or renewal of a long-term care facility
20 license or a long-term care facility administrator's license or the
21 revocation or suspension of the license shall be after notice and hearing
22 before ~~the Long Term Care Facility Advisory Board as provided in § 20-10-303~~
23 an impartial hearing officer as provided in § 20-10-208 and shall be subject
24 to judicial review as provided in § 20-10-212.

25
26 *SECTION 6.* Arkansas Code § 20-10-1408(c), concerning penalties for
27 nursing facilities that miss the required staffing quotas, is amended to read
28 as follows:

29 (c)~~(1)~~ Appeals from the imposition of any ~~monetary penalty remedy~~
30 imposed under this subchapter shall be made pursuant to § 20-10-208.

31 ~~(2) Appeals from the imposition of a denial of new admissions~~
32 ~~under this subchapter shall be made pursuant to § 20-10-303.~~

33
34 /s/ Malone
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APPROVED: 3/16/2005